A

SANGKER SOKINGGAM v. TIMBALAN MENTERI DALAM NEGERI, MALAYSIA & ORS

HIGH COURT MALAYA, KUALA LUMPUR
COLLIN LAWRENCE SEQUERAH J
[CRIMINAL TRIAL NO: WA-44-137-08-2018
B & WA-44-167-10-2018]
13 MARCH 2019

ADMINISTRATIVE LAW: *Judicial review – Habeas corpus – Application for – Allegation of non-compliance of procedure in making of detention order – Whether inquiry properly conducted – Whether duration and time that inquiry took place required to be stated – Whether due process of inquiry properly carried out – Whether there were grounds for judicial review*

C

CRIMINAL PROCEDURE: *Habeas corpus – Application for – Allegation of non-compliance of procedure in making of detention order – Whether inquiry properly conducted – Whether duration and time that inquiry took place required to be stated – Whether due process of inquiry properly carried out – Whether there were grounds for judicial review*

D

CRIMINAL PROCEDURE: *Habeas corpus – Application for – Objection to use of affidavits filed out of time – Absence of provision in Criminal Procedure Code on time for filing and service of affidavits – Whether Rules of Court 2012 could be resorted to – Whether rules on compliance with time for filing affidavits and extension of time applied to criminal proceedings – Whether power to extend time for filing affidavits provided under Courts of Judicature Act 1964 and s. 54(2) of Interpretation Acts 1948 and 1967 – Rules of Court 2012, O. 3 r. 5 & O. 32 r. 13(2)*

E

F

This was an application for a writ of *habeas corpus* at the instance of the applicant in respect of a detention order ('DO') made by the first respondent, ordering the applicant's detention for a period of two years pursuant to the Dangerous Drugs (Special Preventive Measures) Act 1985 ('Act'). The applicant was arrested and Insp. Pathmanaban recorded his statement which was handed over to ASP Munian. Upon receiving the case file from ASP Munian, DSP Ahmad Dahuri reported the fact of the arrest to ACP Dalbir Singh. ACP Dalbir Singh prepared the report under s. 3(2)(c) of the Act and sent it to the Deputy Minister of Home Affairs ('Minister') the complete report of investigation was subsequently submitted by ASP Munian to the inquiry officer ('IO') who in turn conducted an inquiry under s. 5 of the Act and submitted the complete report of the inquiry to the Minister on the same day. The Minister issued the DO against the applicant pursuant to s. 6(1) of the Act and instructed one Mohd Adzharuddein to prepare a statement containing the reasons for the making of the DO as well as the statement of facts on which the DO was based. On the same day, the applicant was served with one copy of the DO, one original statement containing the reasons for the making of the DO, the statement of facts on which the DO was based and three copies of Form 1. Thereafter, the applicant was transported to the

G

H

I

Detention Centre at Simpang Renggam, Johor. The Advisory Board received Form 1 and upon commencement of the meeting of the Advisory Board, submitted their recommendation to the Yang di-Pertuan Agong. At the outset of the application, the applicant raised a preliminary objection that there were five affidavits filed out of time by the respondents and hence objected to the affidavits being used for the purposes of this application. The issue also arose as to whether the provisions of the Rules of Court 2012 ('ROC') applied to criminal proceedings and if they did, the provision regarding compliance with time ought to be adhered to.

Held (dismissing application):

(1) The absence of provision in the CPC with regard to the time stipulated for filing and service of affidavits in criminal proceedings would not render that there are no rules to be observed as such a situation would leave criminal procedure law in a state of uncertainty. Therefore, it stands to reason that, in the event of a lacuna in the CPC with regard to the timing of filing and service of affidavits, the ROC may properly be resorted to in order to properly regulate the orderly handling and disposal of criminal matters which involve the use of affidavits. Hence, in respect to compliance with time for filing of affidavits and extension of time, O. 32 r. 13(2) and O. 3 r. 5 of the ROC, respectively, applied to criminal proceedings. Additionally, sub-s. 25(2) of the Courts of Judicature Act 1964 and s. 54(2) of the Interpretation Acts 1948 and 1967 also provides for the court the power to extend the time taken for the filing of the affidavits. However, the explanation given for the delay was unreasonable. Therefore, the preliminary objection was dismissed and the affidavits objected to, stood as properly filed. (paras 34-37, 40, 41, 43 & 44)

(2) Insp. Pathmanaban's affidavit revealed that he had explained the contents of the DO, the grounds on which detention was ordered and the statement of facts as well as Form 1 to the applicant. Thereafter, he had merely taken the documents back for safekeeping after which he handed them back to the applicant before the applicant was taken to the Rehabilitation Centre at Simpang Renggam. This did not constitute a breach of s. 9 of the Act. (paras 53 & 54)

(3) Although the portion of Form 1 relating to interpretation by the interpreter was left blank, there was a clear statement from Insp. Pathmanaban in his affidavit that the contents of both the DO and Form 1 were explained in Tamil to the applicant. The applicant, by way of his signatures on the documents had acknowledged that he understood their respective contents. (paras 64 & 66)

(4) There was clear evidence that a properly conducted inquiry was carried out. With regard to the submission that there was no interpreter provided during the inquiry, it was clear from the IO's affidavit that the

applicant had informed that he understood the Malay language and that he did not require the service of the interpreter. There was reason to doubt the veracity of the contents of the IO's affidavit. The allegation was an afterthought as they were not specifically raised in the affidavit in support by the applicant and neither was there any affidavit filed in rebuttal of the statements by the IO. Further, the applicant, being the citizen of this country and was of 38 years of age, it was highly unlikely that he was unable to understand, read or write in Bahasa Malaysia. (paras 70-73 & 75)

(5) There was nothing in the Act or the Rules that provide for the duration and the time that the inquiry took place to be stated. It is only imperative that the due process of inquiry as prescribed under the Act was properly carried out. There was also no reason to doubt that the submission of the inquiry report to the Minister was done on the same day in light of the advanced technology and the express mode of communication. Further, there were sufficient grounds upon which to make the DO based on the applicant's involvement in drug trafficking from early January 2016 until January 2018. Therefore, the matters complained of concerning non-compliance of the procedure prior to the making of the DO was not a ground for judicial review and by extension, for *habeas corpus*. (paras 77-79, 82 & 86)

Case(s) referred to:

Abdul Razak Baharudin & Ors v. Ketua Polis Negara & Ors And Another Appeal [2005] 4 CLJ 445 FC ***(refd)***

Dato Mohamed Hashim Shamsuddin v. The Attorney General, Hong Kong [1986] 1 CLJ 377; [1986] CLJ (Rep) 89 SC ***(refd)***

Gapari Kitingan v. The Attorney-General, Malaysia [1991] 1 CLJ 247; [1991] 1 CLJ (Rep) 129 SC ***(refd)***

Kunn Rekon Holdings Sdn Bhd v. PP & 2 Other Applications [1996] 2 CLJ 689 HC ***(refd)***

L Rajanderan R Letchumanan v. Timbalan Menteri, Malaysia & Ors [2010] 7 CLJ 653 FC ***(refd)***

Lee Kew Sang v. Timbalan Menteri Dalam Negeri, Malaysia & Ors [2005] 3 CLJ 914 FC ***(refd)***

Mohd Faizal Haris v. Timbalan Menteri Dalam Negeri Malaysia & Ors [2005] 4 CLJ 613 FC ***(refd)***

Mohd Roslan Muhammad v. Timbalan Menteri Dalam Negeri, Malaysia & Ors [2016] 9 CLJ 411 HC ***(refd)***

Nagarathinam Vadiveloo dan Timbalan Menteri Keselamatan Dalam Negeri, Malaysia dan 3 Lagi (Mahkamah Persekutuan Rayuan Jenayah No: 05-1-2006(J) (Unreported) ***(refd)***

Ng Hong Choon v. Timbalan Menteri Hal Ehwal Dalam Negeri & Anor [1994] 4 CLJ 47 SC ***(refd)***

Vishnu Telagan v. Timbalan Menteri Dalam Negeri & Others (Rayuan Jenayah No. 05(HC)-132-05-2018(B) (Unreported) FC ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 25(2)
Criminal Procedure Code, s. 424(1)(a)
Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 3(2)(c), 5, 6(1), 9, 11C
Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987, r. 3
Interpretation Acts 1948 and 1967, s. 54(2)
Rules of Court 2012, O. 1 r. 2(2), O. 3 r. 5, O. 32 r. 13(2)
Rules of the High Court 1980, O. 1 r. 2(2)

For the applicant - Baljit Singh Sidhu & Shukor Ahmad; M/s Shukor Baljit & Co
For the respondent - Adilah Roslan SFC

Reported by S Barathi

JUDGMENT

Collin Lawrence Sequerah J:

Introduction

[1] This is an application for a writ of *habeas corpus* at the instance of the applicant in respect of a detention order ("DO") made by the first respondent on 13 March 2018 ordering the applicant's detention for a period of two years pursuant to the Dangerous Drugs (Special Preventive Measures) Act 1985 (Act 316) ("the Act").

Background

[2] On 19 January 2018, the applicant was arrested at Jalan Pudu, Pudu Kuala Lumpur. On 23 January 2018, Inspector Pathmanaban a/l Balakrishnan met with the applicant in order to record his statement after which the statement was handed over to ASP Munian a/l Muniandy.

[3] On 29 January 2018, DSP Ahmad Dahuri bin Mohamed Isa received the case file from ASP Munian a/l Muniandy and reported the fact of the arrest to ACP Dalbir Singh a/l Tanah Singh.

[4] On 30 January 2018, the Report under s. 3(2)(c) of the Act was prepared by ACP Dalbir Singh a/l Tanah Singh and sent to the Deputy Minister of Home Affairs ("Minister").

[5] On 22 February 2018, the police investigating officer, ASP Munian a/l Muniandy submitted the Complete Report of Investigation against the applicant to the Minister and to the inquiry officer (I.O), Siti Khadijah binti Mohd Pisol.

[6] On 6 March 2018, the IO conducted an inquiry under s. 5 of the Act and on the same day submitted the complete report of the inquiry to the Minister.

[7] On 13 March 2018, the Minister issued the DO against the applicant pursuant to s. 6(1)of the Act and instructed Mohd Adzharuddein bin Baharom to prepare a statement containing the reasons for the making of the DO as well as the statement of facts on which the DO was based.

[8] On the same day, the applicant was served one copy of the DO, one original statement containing the reasons for the making of the DO, the statement of facts on which the DO was based and three copies of Form 1.

[9] On 14 March 2018, the applicant was transported to the Detention Centre ("Pusat Permulihan Akhlak") Simpang Rengam, Johor.

[10] On 15 March 2018, the Advisory Board received Form 1. On 29 March 2018, the meeting of the Advisory Board was adjourned to 10 April 2018 upon the application of the applicant in order for him to appoint counsel.

[11] On 10 April 2018 the meeting of the Advisory Board was adjourned to 24 April 2018 on application of counsel for the applicant on the grounds that he is attending to a hearing at the Temerloh Court, Pahang.

[12] On 24 April 2018 the meeting of the Advisory Board was adjourned to 16 May 2018 upon application of counsel for the applicant on the grounds that he is attending to a hearing at the Temerloh Court, Pahang.

[13] On 16 May 2018, the Advisory Board meeting commences with the attendance of the applicant. On 22 May 2018, the Advisory Board submits their recommendations to the Yang di Pertuan Agung ("YDPA").

[14] On 6 June 2016, the YDPA consents to the recommendations of the Advisory Board.

Preliminary Objection

[15] At the outset of this application, learned counsel for the applicant submitted that there were five affidavits filed out of time by the respondents which delay was stated to be by 48 days.

[16] The applicant therefore objected to the said affidavits being used for the purposes of this application.

[17] The explanation rendered by the respondents for the delay was explained by way of an affidavit on the part of the respondents (encl. 3) in Case No: WA-44-167-10-2018 affirmed on 5 October 2018. This principally related to the whereabouts of the Deputy Minister, Dato' Masir Kujat ("Minister") prior to 24 September 2018 and hence the failure to file affidavits within the time frame and the failure to justify such delay.

[18] In particular, the affidavit explained that the Minister was in Kuching, Sarawak at the material time ie, 5 October 2018 (the date the affidavit was affirmed) and that he would be back in Kuala Lumpur on 15 October 2018 to attend Parliament and was not in a position to attend at his office in order to affirm his affidavit in reply.

[19] Secondly, it was also stated that no information was as yet forthcoming from the Advisory Board with respect to the meeting to consider the applicant's representations and that was why some of the related affidavits could not also be filed.

[20] Lastly, it was averred that the inquiry officer attached to the Ministry of Home Affairs was on maternity leave and was at the moment in Perlis resulting in the delay of filing of her affidavit.

[21] The issue also arose whether the provisions of the Rules of Court 2012 ("ROC") applied to criminal proceedings. If they did, then all of the provisions regarding compliance with time ought to be adhered to also.

[22] This would include O. 32 r. 13(2) which relates to the 14 day time frame for filing and service of affidavits and O. 3 r. 5 which relates to extension of time within which to do any act.

[23] Learned counsel for the applicant by way of written submission dated 6 January 2018 took the position that the filing of encl. 1 for extension of time to file the affidavits by virtue of O. 3 r. 5 ROC by the respondents was inapplicable.

[24] This was because it was contended that by virtue of O. 1 r. 2(2) the ROC does not apply to criminal proceedings.

[25] However, by way of their written submissions dated 14 December 2018 the respondents took the view that since Chapter XXXIV of the Criminal Procedure Code ("CPC") does not explicitly stipulate the period within which an affidavit in reply must be filed and served, then O. 32 r. 13(2) ROC must apply with full force.

[26] The applicant thus took diametrically opposed stands with respect as to whether or not the ROC has any application to criminal proceedings.

[27] The applicant on the one hand urged this court not to countenance any application on the part of the respondent for extension of time to file affidavits out of time by virtue of the fact that O. 3 r. 5 ROC as the ROC had no application to criminal proceedings.

[28] However in urging this court to hold the respondent strictly to the provisions of O. 32 r. 13(2) ROC, it was argued that there was authority to support the position that the ROC had application to criminal proceedings.

[29] In doing so, the High Court case of *Kunn Rekon Holdings Sdn Bhd v. PP & 2 Other Applications* [1996] 2 CLJ 689; [1996] 5 MLJ 261 was referred to where the primary issue that arose was as follows:

> Whether the provisions of s. 424(1)(a) of the CPC prohibit or exclude the use of an affidavit in a criminal court if such an affidavit is sworn in the Federation before a Commissioner for Oaths and not before a magistrate or registrar?

[30] In determining the question in the negative, the court *inter alia* reasoned as follows:

> In considering the issue the court held that The learned deputy further contends that pursuant to O. 1 r. 2(2) of the Rules of High Court 1980 ('the RHC 1980'), the provisions of the RHC 1980 are expressly stated to be inoperative in relation to criminal proceedings.
>
> All learned counsel for the respective applicants on the other hand submit that the RHC 1980 are applicable and have full force in relation to affidavits which are to be used in a criminal court. **In my considered opinion, O. 1 r. 2(2) of the RHC 1980 is not intended to wholly or completely exclude its application to criminal proceedings.** (emphasis added)

[31] The court in so holding referred to a succession of cases including *Dato Mohamed Hashim Shamsuddin v. The Attorney General, Hong Kong* [1986] 1 CLJ 377; [1986] CLJ (Rep) 89; [1986] 2 MLJ 112, *Gapari Kitingan v. The Attorney-General, Malaysia* [1991] 1 CLJ 247; [1991] 1 CLJ (Rep) 129; [1991] 1 MLJ 159 and *Ng Hong Choon v. Timbalan Menteri Hal Ehwal Dalam Negeri & Anor* [1994] 4 CLJ 47; [1994] 3 MLJ 285.

[32] The court in *Kunn Rekon Holdings* went on to state in respect of these cases as follows:

> These decisions of the Supreme Court and the High Court have established one common denominator in that notwithstanding the provisions of O. 1 r. 2(2) of the RHC 1980, it is demonstrably clear that O. 66 (obtaining of evidence for foreign courts); O. 39 (evidence by deposition: examiners of the court); O. 54 (now revoked, but when in force, it governed *habeas corpus* proceedings), of the RHC 1980 are operative and apply equally to both civil and criminal proceedings.

[33] In the *Kunn Rekon Holdings* case, the reference to O. 1 r. 2(2) was in relation to the then Rules of the High Court 1980 which is similar to the present O. 1 r. 2(2) of the ROC which provides as follows:

> These Rules do not have effect in relation to proceedings in respect of which rules have been or may be made under any written law for the specific purpose of such proceedings or in relation to any criminal proceedings.

[34] It is not in dispute that there are no provisions in the CPC with regard to the time stipulated for filing and service of affidavits in criminal proceedings. However, it cannot be the case that just because there are no provisions in the CPC, there are no rules to be observed with respect to the time within which such affidavits in support or affidavits in reply resulting in time being at large.

[35] Such a situation would leave criminal procedural law in a state of uncertainty. This would result in parties to a criminal proceeding choosing to file affidavits whenever they choose to do so or by the courts choosing to impose whatever arbitrary time limits they deemed fit. This would inevitably lead to a situation where no uniformity existed among the courts.

[36] It therefore stands to reason that in the event of a lacuna in the CPC with regard to the timing of filing and service of affidavits, the ROC may properly be resorted to in order to properly regulate the orderly handling and disposal of criminal matters which involve the use of affidavits.

[37] Upon a consideration of the above authorities and for the reasons given, I therefore ruled that the relevant provisions of the ROC with respect to compliance with time for filing of affidavits namely, O. 32 r. 13(2) and O. 3 r. 5 with respect to extension of time, applied to criminal proceedings.

[38] Further, if, as the applicant initially contended, the provisions of O. 32 r. 13(2) ROC with respect to the 14 day time frame applied to criminal proceedings then it had to follow also that O. 3 r. 5 ROC would similarly apply with the result that the respondent could apply for extension of time to file the affidavits notwithstanding that such application was made after the time limited for the filing of such affidavits.

[39] In short, either the ROC applied to criminal proceedings with regard to filing of affidavits in its entirety or not at all. It was not for the parties to pick and choose which Orders applied and which did not.

[40] Additionally, with respect to the additional powers of the High Court, the provisions of the Schedule to sub-s. 25(2) of the Courts of Judicature Act 1964 ("CJA"), provide as follows:

> Time
>
> 8. Power to enlarge or abridge the time prescribed by any written law for doing any act or taking any proceeding, although any application therefor be not made until after the expiration of the time prescribed.

[41] This provides further impetus to the argument that this court may extend the time taken for the doing of any act which includes the time taken for the filing of affidavits. This is of course in addition to the express provisions of O. 3 r. 5 of the ROC which I ruled applied in any case.

[42] Further and in any event, s. 54 (2) of the Interpretation Acts 1948 and 1967 stipulates as follows:

> 54. Computation of time
>
> (1) …
>
> (2) Where no time is prescribed within which anything shall be done, that thing shall be done with all convenient speed and as often as the prescribed occasion arises.

[43] Based upon the above analysis, this court had the power to therefore extend the time taken for the filing of the affidavits.

[44] Reverting to the issue of the objection to the affidavits being filed out of time, I found that although more urgent action ought to have taken with respect to the filing of the affidavits, the explanation given for the delay as alluded to above was by no means unreasonable. I therefore ruled that the preliminary objection be dismissed and the affidavits objected to stand as properly filed.

The Law On *Habeas Corpus*

[45] The powers of the court when hearing an application for *habeas corpus* in the context of the present case is governed by s 11C of the Dangerous Drugs (Special Preventive Measures) Act 1985 (Act 316) which in so far as is relevant reads as follows:

> 11C. Judicial review of act or decision of Yang di-Pertuan Agong and Minister
>
> (1) There shall be no judicial review in any court of, and no court shall have or exercise any jurisdiction in respect of, any act done or decision made by the Yang di-Pertuan Agong or the Minister in the exercise of their discretionary power in accordance with this Act, save in regard to any question on compliance with any procedural requirement in this Act governing such act or decision.

The term "judicial review" is defined as follows:

> 11D. Interpretation of "judicial review"
>
> In this Act, "judicial review" includes proceedings instituted by way of:
>
> (a) an application for any of the prerogative orders of *mandamus*, prohibition and *certiorari*;
>
> (b) an application for a declaration or an injunction;
>
> (c) a writ of *habeas corpus*; and
>
> (d) any other suit, action or other legal proceedings relating to or arising out of any act done or decision made by the Yang di-Pertuan Agong or the Minister in accordance with this Act.

[46] In *Lee Kew Sang v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2005] 3 CLJ 914; [2005] 4 AMR 724; [2005] 2 MLJ 631, it was held:

> In our view, courts must give effect to the amendments. That being the law, it is the duty of the courts to apply them. So, *in a habeas corpus application where the detention order of the minister made under s 4(1) of the Ordinance or, for that matter, the equivalent sections in the ISA 1960 and the DD(SPM) Act 1985, the first thing that the courts should do is to see whether the ground forwarded is one that falls within the meaning of procedural non-compliance or not.* To determine the question, the courts should look at the provisions of the law or the rules that lay down the procedural requirements. *It is not for the courts to create procedural requirements because it is not the function of the courts to make law or rules. If there is no such procedural requirement then there*

cannot be non-compliance thereof. Only if there is that there can be non-compliance thereof and only then that the courts should consider whether, on the facts, there has been non-compliance. (emphasis added.)

[47] This decision was followed in *Abdul Razak Baharudin & Ors v. Ketua Polis Negara & Ors And Another Appeal* [2005] 4 CLJ 445; [2005] 6 AMR 529; [2006] 1 MLJ 320.

[48] It is thus clear that the court is not to look to the substance or merits of the decision made but must confine itself to the issue of whether there has been a breach of any procedural requirements in the relevant legislation.

Analysis And Findings

[49] To address the merits of the application, the applicant alleged non-compliance with ss. 9 and 5 of the Act and r. 3 of the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987 ("the Rules") respectively.

(i) Non-compliance With s. 9 Of The Act

Section 9 of the Act reads:

9. Representations against detention order

(1) A copy of every order made by the Minister under subsection 6(1) shall as soon as may be after the making thereof be served on the person to whom it relates, and every such person shall be entitled to make representations to an Advisory Board.

(2) For the purpose of enabling a person to make representations under subsection (1) he shall, at the time of the service on him of the order:

(a) be informed of his right to make representations to an Advisory Board under subsection (1) and

(b) be furnished by the Minister with a statement in writing-

(i) of the grounds on which the order is made;

(ii) of the allegations of fact on which the order is based; and

(iii) of such other particulars, if any, he may in the opinion of the Minister reasonably require in order to make his representations against the order to the Advisory Board.

(3) The Yang di-Pertuan Agong may make rules as to the manner in which representations may be made and for regulating the procedure of the Advisory Board.

[50] It is submitted by the applicant that although the relevant documents including the DO was shown to the applicant, they were later taken away for safe-keeping. It was averred that these documents would be returned to the applicant later upon arrival at the detention centre.

[51] The applicant relied upon the High Court case of *Mohd Roslan Muhammad v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2016] 9 CLJ 411; [2016] 11 MLJ 751 where a similar situation obtained. It was held there that there was non-compliance with s. 9 of the Act.

[52] The said case has however since been overruled by the Federal Court. This being the case, I ruled that there was no merit to the submissions of learned counsel for the applicant on this issue.

[53] In any event, a perusal of the averments in para. 26 of Inspector Pathmanaban a/l Balakrishnan's affidavit affirmed on 19 September 2018 reveals that he explained the contents of the DO, the grounds on which detention was ordered and the statement of facts as well as Form 1 to the applicant.

[54] Thereafter he had merely taken the documents back for safekeeping after which he handed them back to the applicant on 14 March 2018 before the applicant was taken to the Rehabilitation Centre at Simpang Rengam, Johor. I do not find under the circumstances that this constituted a breach of s. 9 of the Act.

[55] Still on s. 9 of the Act, *albeit* on a different issue, the applicant further contended that there was non-compliance with sub-s. (2) thereof which pertains to the right of the applicant to be informed be informed of his right to make representations to an advisory board under sub-s. (1).

[56] It was submitted that although para. 17 of Insp. Pathmanaban a/l Balakrishnan's affidavit affirmed on 19 September 2018 stated that the applicant had requested for interpretation in Tamil, it was not apparent from the relevant documentation that such interpretation had been provided.

[57] This submission rested on the contention that exh. PB1, which is p. 2 of the DO, upon examination, reveals that the portion relating to the matter of interpretation was left blank.

[58] This, submitted the applicant, raised the doubt as to whether in fact interpretation was provided as requested and if so, by whom. This is compounded by the fact, submitted the applicant, that in Form 1 which was never filled up by the applicant as clearly seen from the document itself where it is clearly stated that the representation was recorded by "INSP G/ 21846 PATHMANABAN A/L BALAKRISHNAN", neither interpretation nor the reading thereof was given to the applicant by any person as it was marked with – "to indicate "not necessary".

[59] The applicant in support cited the recent decision of the Federal Court in the case of *Vishnu a/l Telagan v. Timbalan Menteri Dalam Negeri & 2 Others* (Rayuan Jenayah No. 05(HC)-132-05-2018(B)).

[60] The applicant submitted that the issue in that case concerned a contradiction in the averments of the police case file officer and the Tamil interpreter who had purportedly explained the contents of the DO and translated it to the appellant in Tamil when it was served.

[61] No written grounds were however made available but it was submitted that the Federal Court allowed the appeal on the above ground. A perusal of the written submissions filed by the appellant's solicitors in that case however will reveal that on the face of the DO, it was stated that the contents were explained to the detainee appellant in Bahasa Malaysia.

[62] On the other hand, both the affidavits of the police case file officer and the Tamil interpreter stated that the contents of the DO were translated to the detainee appellant from Bahasa Malaysia to Tamil.

[63] There therefore existed a clear contradiction between what was evident on the face of the DO with the averments by the police case file officer and the Tamil interpreter with respect to whether or not the contents of the DO were actually interpreted to the detainee appellant.

[64] Reverting to the facts of the instant case on the other hand, the facts are quite different. Although the portion in Form 1 ("exh. PB2") relating to interpretation by the interpreter is left blank, there is a clear statement from Insp. Pathmanaban at para. 31 of his affidavit affirmed on 19 September 2018 ("encl. 12") that the contents of both PB1, the DO and PB2 were explained in Tamil to the applicant.

[65] I therefore find that the facts in this case are distinguishable from the facts in the case of *Vishnu a/l Telagan v. Timbalan Menteri Dalam Negeri & 2 Others (supra)*.

[66] In the event, I find that both the contents of the DO ("PB1") and Form 1 ("PB2") were properly explained and interpreted by Inspector Pathmanaban to the applicant and that the applicant by way of his signatures on these documents had acknowledged that he understood their respective contents.

(ii) Non-compliance With s. 5 Of The Act

The submission regarding this was with regard to the following:

(a) There was no evidence that an inquiry was held by the inquiry officer ("IO") and submitted to the Minister:

(b) There was no interpreter provided during the inquiry;

(c) The duration and time of the inquiry is not stated;

(d) It was not reasonable that the inquiry report could have been completed and submitted to the Minister on the same day; and

(e) There arose a doubt whether the applicant was still involved or had been involved in drug related activities.

[67] A perusal of the relevant paragraphs of the affidavit in reply of the IO, Siti Khadijah binti Mohd Pisol affirmed on 2 October 2018 ("encl. 23"), however show otherwise.

[68] At para. 7 of the said affidavit, the IO states:

> 7. Pada 06-03-2018 di Pejabat Narkotik, Ibu Pejabat Polis Kontinjen Kuala Lumpur, saya telah menjalankan siasatan secara fizikal menurut seksyen 5(2) Akta tersebut terhadap Pemohon. Dalam siasatan tersebut, Pemohon telah hadir dan Pemohon telah diberi peluang untuk memberikan keterangan tanpa sebarang ugutan atau paksaan.

[69] At para. 13, it states as follows:

> 13. Seterusnya, pada 06-03-2018, saya telah mengemukakan laporan lengkap bertulis berkaitan Pemohon tersebut kepada Timbalan Menteri Dalam Negeri bagi mematuhi seksyen 5(4) Akta tersebut ...

[70] It is therefore clear that there was evidence that a properly conducted inquiry was carried out. I therefore find no merit in the submission by learned counsel on this point.

[71] With regard to the submission that there was no interpreter provided during the inquiry, para. 9 of the affidavit of the IO states:

> 9. Sebelum memulakan siasatan, saya terlebih dahulu telah memperkenal diri saya dan saya telah bertanya kepada Pemohon sama ada Pemohobn memahami bahasa Malaysia yang saya gunakan. Pemohon memaklumkan bahawa Pemohon faham bahasa Malaysia yang saya gunakan. Kemudian saya bertanya sama ada Pemohon memerlukan khidmat jurubahasa. Pemohon memberitahu saya bahawa Pemohon tidak memerlukan khidmat jurubahasa.

[72] I have no reason to doubt the veracity of the contents in the affidavit of the IO on the matters raised above. There was no specific denial that an inquiry did in fact take place and there was further no counter affidavit to the affidavit of the IO. A similar situation obtained in respect of the allegation that the applicant did not understand Bahasa Malaysia.

[73] I also agree with the submission of the respondents that the allegations raised were an afterthought as they were not specifically raised in the affidavit in support by the applicant and neither was there any affidavit filed in rebuttal of the statements by the said IO, Siti Khadijah binti Mohd Pisol affirmed on 2 October 2018 ("encl. 23").

[74] It is also evident upon a perusal of Form 1 in exh. "PB2" to encl. 12 which is the affidavit affirmed on 19 September 2018 by Inspector Pathmanaban, that the said form was filled up by the applicant in Bahasa Malaysia.

[75] Further, the NRIC No. of the applicant which is stated as 800613-14-5997 will reveal that he is now about 38 years of age. Citizens of this country of that age would have received their basic education in Bahasa Malaysia and it is highly unlikely that the applicant is unable to understand, read or write in Bahasa Malaysia.

[76] I am fortified in this coming to this conclusion by referring to the case cited by learned counsel for the respondents, namely, *Nagarathinam a/l Vadiveloo dan Timbalan Menteri Keselamatan Dalam Negeri, Malaysia dan 3 Lagi* (Mahkamah Persekutuan Rayuan Jenayah No: 05-1-2006(J) where the court observed:

> *The Applicant affirmed that he could not understand nor speak Bahasa Malaysia* (see enclosure 4, paragraph 13). But the established facts say otherwise. *The Applicant is*, by his own admission (see enclosure 4), *a citizen of Malaysia where Bahasa Malaysia, apart from the fact that it is the official language, is the lingua franca. Surely over the years and in his daily life, the Applicant would have picked up the lingua franca. The Applicant is the holder of identity card number 811121-06-5863, which first digits reveal (see Regulation 5(2A) of National Registration Regulations 1990 as amended by P.U. (A) 232/01) that the Applicant is well within that age as to have received some formal instruction in Bahasa Malaysia.* It must stand to reason that the Applicant could surely speak and understand simple Bahasa Malaysia. (emphasis added)

[77] With respect to the fact that the duration and the time that the inquiry took place is not stated, there is nothing in the Act or the Rules that provide for such a requirement. It is only imperative that the due process of inquiry as prescribed under the Act was properly carried out and there is nothing I find that suggests anything to the contrary.

[78] The applicant also submitted that it was not reasonable that the inquiry report could have been completed and submitted to the Minister on the same day.

[79] In regard to this, the affidavit of the Minister affirmed on 15 October 2018 at paragraph states:

> 7. … Selanjutnya, pada 06-03-2018 saya telah menerima laporan lengkap bertulis berkaitan Pemohon di bawah seksyen 5(4) Akta tersebut daripada Pegawai Siasatan Kementerian Dalam Negeri, SITI KHADIJAH BINTI MOHD PISOL.

[80] Here again, there is no reason to doubt that what the Minister said is indeed the truth. In any event, with advanced technology and the express mode of communication in this day and age, documents can easily be delivered with speed and ease.

[81] With regard to the fact as to whether the applicant was still involved or had been involved in drug related activities, this I find is a mere play on words and fails to engage the substance of the matter which is that there were reasonable grounds to believe that the applicant in engaging in drug trafficking activities had prejudiced public order.

[82] A perusal of the statement of facts upon which the DO was based, exh. PB1, states that the applicant was involved in drug trafficking of heroin intermittently from early January 2016 until January 2018. There were therefore sufficient grounds upon which to make the DO.

[83] Aside from all that I have stated above, with regard to the allegations relating to the conduct of the inquiry, it behoves me to say that I am bound by the decision of the apex court in *Mohd Faizal Haris v. Timbalan Menteri Dalam Negeri Malaysia & Ors* [2005] 4 CLJ 613; [2006] 2 AMR 193; [2006] 1 MLJ 309, as follows:

> *The general rule that a writ of habeas corpus must be directed against the current order of detention therefore applies where a detention under s. 6(1) has been made subsequent to an arrest and detention under s. 3(1) and (2). It follows that where a detention order has been made under s. 6(1) the writ of habeas corpus must be directed only against that order even if the earlier arrest and detention are irregular.* This view is supported by *Barnardo v. Ford* [1892] AC 326 where Lord Halsbury said that he could not agree to the proposition that if a court is satisfied that illegal detention has ceased before application for the writ has been made, nevertheless the writ might issue in order to vindicate the authority of the court against a person who has once, though not at the time of the issue of the writ, unlawfully detained another or wrongfully parted with the custody of another. Thus *any irregularity in a detention order made under s. 3(2) when it has been superseded by one under s. 6(1) is not a relevant matter for consideration.* In this regard *The Law of Habeas Corpus* (2nd edn) by RJ Sharpe says at p 179:
>
> > It has been held consistently that the relevant time at which the detention of the prisoner must be justified is the time at which the court considers the return to the writ. This rule means that nothing which has happened before the present cause of detention took effect will be relevant to the issue before the court, unless by reason of some special consideration arising from the particular proceedings.
>
> And at p. 186:
>
> > On the present state of the law, in almost every instance, the relevant time at which the detention is to be justified is the time at which the court considers the case. Prior illegality will not be relevant unless by reason of some special rule derived from the particular nature of the proceedings involved.
>
> Therefore *a prior illegality which has ceased cannot be the subject matter of inquiry.* That would also be the conclusion in the case of a detention order made under s. 8(1) of the Internal Security Act 1960 and s. 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 subsequent to an arrest and detention made under both the statutes. It is perhaps appropriate to refer to *Kerajaan Malaysia & 2 Ors v. Nasharuddin Nasir* [2003] 6 AMR 497; [2004] 1 CLJ 81 where it was held that an order of detention made under s. 8(1) of the Internal Security Act 1960 is not tainted by an illegality or irregularity in the s 73 detention. However, the conclusion was reached not on the rationale as discussed in this judgment

> but on the principles enunciated in *Karam Singh v. Menteri Hal Ehwal Dalam Negeri, Malaysia* [1969] 2 MLJ 129; [1969] 1 LNS 65. Such an approach would leave unanswered the effect of procedural irregularities in an earlier detention which has been superseded by another detention order. Be that as it may, that case made it clear that a court has no jurisdiction to hear a writ filed against the police for irregularities in a detention order under s. 73(1) of the Internal Security Act 1960 when it had been superseded by one under s. 8(1) thereby bringing into sharp focus the propriety of the judgment of this court in *Mohamed Ezam Mohd Noor & 4 Ors v. Ketua Polis Negara* [2001] 4 AMR 4605; [2002] 4 CLJ 309. The rationale underlying this judgment would, with respect, render the stand taken in the latter case unsustainable in law. (emphasis added)

[84] These sentiments were echoed by a later apex court in *L Rajanderan R Letchumanan v. Timbalan Menteri, Malaysia & Ors* [2010] 7 CLJ 653 where it was held:

> Firstly, *an application for a writ of habeas corpus must be directed against the current detention order even when the earlier arrest had been irregular. Secondly, any irregularity for non-compliance with the procedures under s. 3(2)(a), (b) and (c) is not a relevant matter for consideration when it has been superseded by the Deputy Minister's detention order made under s. 6(1) of the Act. Thirdly, the pre-condition to the exercise of the Deputy Minister's power to order a detention is merely to consider the reports of investigation made by the police and the inquiry officer.* And lastly, there is no necessity to explain the sequence of events that transpired prior to the making of the detention order, and it follows that there is no necessity to file explanatory affidavits in relation to the prior arrest of the detainee.

[85] It was also held by the apex court in that case:

> The scheme under the Act (similarly under the POPOC) is that before a detention order is directed, the police would need to conduct an investigation which includes the power to detain any suspected persons. *The manner on conducting the investigations and arrests at this stage, is neither a condition precedent nor; a matter which has a direct link with the detention order and thus not a ground for judicial review.* Previous cases such as *Koh Yoke Koon v. Minister for Home Affairs, Malaysia & Anor* [1987] 1 LNS 67, which held that a detention order made against a suspect who had been illegally detained by the police at the investigation stage is subject to judicial review are no longer good law since this is not a procedural non-compliance of a condition precedent to nullify the detention order. (see also the Federal Court case of *Lee Kew Sang v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2005] 3 CLJ 914). (emphasis added)

[86] Whatever matters complained of concerning non-compliance of procedures prior to the making of the DO is therefore not a ground for judicial review and by extension for *habeas corpus* in any event.

(iii) Non-compliance With r. 3 Of The Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987 ("The Rules")

[87] This relates to the alleged fact that the Commandant of the Rehabilitation Centre at Simpang Renggam ("Penguasa Penjaradan Pegawai, Pusat Permulihan Akhlak, Simpang Renggam, Johor") namely, Ramli bin Hussain had not explained to the applicant his right of representation.

The said rule in so far as is relevant reads:

> 3. Procedure for making representations.
>
> (1)-(2) …
>
> (3) When a detained person is brought to a place of
>
> detention, the Officer in Charge shall as soon as practicable remind the person of his right to make representations.

[88] In this regard it is apposite to refer to the affidavit in reply of the said Ramli bin Hussin affirmed on 18 September 2018 ("encl. 7") in para. 7 as follows:

> 7. … Saya juga telah mengingatkan Pemohon berkenaan hak-haknya untuk membuat representasi menurut Kaedah 3(3) Kaedah-Kaedah tersebut dan telah menerangkan kepada Pemohon tujuan representasi dijalan adalah untuk Pemohon membuat bantahan terhadap Perintah Tahanan tersebut.

[89] Further, by the applicant's own admission, his representations to the Advisory Board were undoubtedly submitted and heard *albeit* that he challenged the composition of every one of its members.

[90] This much is evident from the contents of the affidavit by Abdul Qhafur bin Abdul Mutalib, the Secretary to the Advisory Board, affirmed on 19 October 2018 where it was stated that the representations were heard by the Advisory Board on 16 May 2018 at 9am at the Rehabilitation Centre at Simpang Renggam ("Pusat Permulihan Akhlak, Simpang Renggam, Johor").

[91] It was also stated in the affidavit that the applicant was represented by counsel and had also called two witnesses in support.

[92] It is therefore beyond doubt that the applicant was informed of his right to make a representation. I find no merit therefore in counsel's submission that there was non-compliance with r. 3 of the Rules.

[93] In the premises and for the reasons aforesaid, the application is dismissed.